

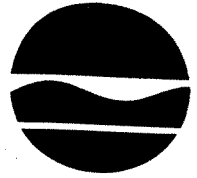
New York State Department of Environmental Conservation

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Handwritten signature and date: 8/17/10

Mr. Roch Baamonde
Chief, Grants and Contracts
Management Branch
United States Environmental Protection
Agency - Region II
290 Broadway
New York, NY 10007-1866

AUG 12 2010

Dear Mr. Baamonde:

Re: Award of Pesticide Enforcement Cooperative Agreement for
Federal Fiscal Year (FFY) 2009/2010
Assistance ID No.: E00215232

We are pleased to accept your offer to assist New York State with its pesticides enforcement program. The award includes \$424,000 in federal assistance for the program beginning October 1, 2009 and ending September 30, 2010. The matching share associated with this award is \$86,583.

We look forward to continued cooperation between the United States Environmental Protection Agency and New York State in addressing program needs. If you have any questions, please contact Mr. Edwin Dassatti, Director, Division of Solid & Hazardous Materials, at (518) 402-8651.

Sincerely,

Nancy Lussier
Director
Division of Management & Budget Services

Enclosures

cc: w/enc. - A. Enache
T. Truesdale

**WORK PLAN
FOR THE PESTICIDE ENFORCEMENT
COOPERATIVE AGREEMENT
FOR THE STATE OF NEW YORK**

Federal Fiscal Year 2010
(October 1, 2009 Through September 30, 2010)

May 20, 2009

**Division of Solid & Hazardous Materials
New York State Department of Environmental Conservation
Albany, New York 12233-7250**

**WORK PLAN
FOR THE PESTICIDE ENFORCEMENT COOPERATIVE AGREEMENT
FOR THE STATE OF NEW YORK
Federal Fiscal Year 2010
(October 1, 2009 Through September 30, 2010)
May 28, 2009**

This work plan is based on the Federal Fiscal Year (FFY) 2008-2010 Joint USEPA OPP/OECA State/Tribal Cooperative Agreement Guidance (the Guidance) and pertinent sections of earlier guidance.

This work plan addresses work to be accomplished with the funding provided under the Pesticide Enforcement Cooperative Agreement. Using federal work load factors in the Guidance, and the average annual salary of field staff executing work under this plan (approximately \$113,000, with fringe and indirect costs included), NYSDEC projects that federal funds combined with State matching funds would enable NYSDEC to accomplish the inspections and sampling collection/analysis accomplishments detailed in Table B of this work plan. The remainder of the funding would be allocated to certain other work elements under this plan, including those associated with administrative/legal/enforcement activities.¹

As demonstrated by the scope of this work plan, long-standing work elements called for under the Guidance compete for the staffing supported under this Agreement. In addition, new elements have been added to the current Enforcement Guidance:

- Section 19(f) compliance and enforcement activities,
- Section 18, §24(c) and EUP inspection projections and monitoring and plan for such,
- Antimicrobial pesticides sampling for testing (not applicable to NYS in FFY 2010), and inspections and education are encouraged.
- Endangered species inspections and reporting, and
- Minor add-ons to preexisting work elements.

Section 19(f) compliance and enforcement alone is a major work load; it is taking several person years of effort to plan and implement the residue removal and containment components as well as promulgate regulations for residue removal. These elements must be supported solely by State resources outside of this Agreement, because there are no funds for them under this Agreement. Any effort expended on the remaining new elements listed above will also largely be accomplished under State resources.

¹NOTE: If USEPA were to request NYSDEC to participate in additional work loads (e.g., special enforcement initiatives), this would likely utilize a portion of the staffing supported by the funding under this Agreement for existing elements under this work plan. NYSDEC would therefore need to reassess the staffing allocations of this work plan.

In a nutshell, most base elements of this Agreement cannot be fully accomplished with the existing level of support under the Agreement, let alone added work elements. It is also not possible to accomplish them fully with already overtaxed State resources outside of the Agreement. NYSDEC has carefully assessed the work load. Several factors were necessarily highlighted when considering the feasibility of managing, in any reasonable manner, the scope of work under this Agreement:

- increasing costs of government operations,
- the potential for federal support to remain static or decrease (trend of the past decade),
- the potential for the scope of work elements requested by USEPA to increase (e.g., due to revised federal WPS, containment/container, etc.).

As a result, NYSDEC has endeavored to allocate resources under this Agreement to elements that will best serve the environmental stewardship of pesticides management and still be responsive to the most significant work elements requested by USEPA.

I. COMPLIANCE-ENFORCEMENT PRIORITIES

A. Worker Protection Compliance and Enforcement Activities

1. Use Inspections

NYSDEC will conduct Worker Protection Standard (WPS) inspections, as appropriate, in accordance with USEPA WPS Agricultural Inspection Guidance (Appendix 4C of the USEPA Guidance for this Cooperative Agreement). As shown in the table at the end of this work plan, we project that, with resources provided under this Agreement, we will conduct 33 WPS inspections during FFY 2010. We estimate that 60% of those inspections will be Tier I and 40% will be Tier II. We recognize USEPA's emphasis on the conduct of Tier I inspections and we will endeavor to conduct them, but the conduct of Tier I and timing of pesticide applications and related restricted entry intervals are unknown until the agricultural establishment is inspected.

2. Tips and Complaints

We will record and track any WPS tips/complaints received and any pertinent related information will be considered in setting priorities among tips/complaints. This will primarily be addressed and reported under the Pesticides Program Cooperative Agreement, which covers tips and complaints. Also, per the federal guidance, NYSDEC will track complaints related to documented worker exposure to agricultural use pesticides, including those documented as FIFRA §27 referrals. Investigations of any WPS tips/complaints will, as appropriate, include a complete WPS inspection.

3. WPS Inspection Targeting

The NYSDEC WPS targeting plan was developed and transmitted with the FFY 2005 work plan;

when feasible, we will utilize concepts in that plan when determining WPS enforcement locations.

4. WPS Enforcement

NYSDEC will report on enforcement, if any, associated with WPS inspections projected to be conducted under this Agreement. In accordance with the guidance and, commensurate with federal funding for this work element, NYSDEC will, in regard to projected WPS inspections:

- provide, in our mid- and end-of-year reports, a narrative summary of significant enforcement actions resulting from projected WPS inspections, which had significant deterrent value or included significant monetary penalty,
- provide summary information on the number of other enforcement actions resulting from WPS inspections (e.g., stop sale orders, warning letters, etc.), and
- conduct inspections, as needed, at agricultural establishments subject to prior WPS enforcement.

5. Continued Outreach/Compliance Assistance

NYSDEC will provide WPS outreach, as appropriate under the Agreement, through presentations and at events such as State and county fairs. This activity would be limited by the lack of funds for outreach materials under the Pesticide Program Cooperative Agreement, which is the Agreement under which WPS outreach is primarily addressed.

6. Reporting

Similar to what is covered under section I.A.4 of this work plan, NYSDEC will provide USEPA Region II, with the mid- and end-of-year reports, a summary of WPS accomplishments achieved and enforcement/compliance conducted under this Agreement, such as:

- completed USEPA form WPS 5700-33H, along with narrative reports of significant enforcement actions,
- tracking of any §27 referrals related to WPS, and
- brief narrative regarding investigations of worker/handler occupational exposure investigated.

7. Training

NYSDEC will send appropriate personnel to USEPA-sponsored training programs, provided additional funds for such are allocated by USEPA, State approval for out-of-State travel is obtained, and sufficient notice of training opportunities is provided by USEPA. Any consideration by NYSDEC of noncompliance found in regard to compliance assistance needs would be very limited, since no funds are available under the Agreement for that type of activity.

B. Program Performance Reporting

NYSDEC will track and submit PART data on work elements conducted under this Agreement. Also see item IV.A-E of this work plan, which, as per the Guidance, reflects PART and other reporting.

C. Section 19(f) Compliance and Enforcement Activities

The Department plans, in the second half of this FFY, to advise, during the course of routine compliance activities, pertinent pesticide users to expect to begin seeing, after August 16, 2010, products with new federal label language regarding residue removal. The Department may utilize appropriate outreach materials provided by USEPA. Any NYSDEC inspections regarding the new label language would be part of ongoing inspections of pesticide users or retailers, as appropriate, at the end of this FFY or thereafter.

NYSDEC will continue with the NYS container residue removal regulation rulemaking process during this FFY. This extended process will include significant staff and attorney time, which is fully supported by State monies (not federal), who will also work on other priority program work loads during the same time period. NYSDEC does not expect to conduct residue removal inspections of refillers before August 16, 2011.

II. WORK ACTIVITIES TO SUPPORT THE CORE PESTICIDE COMPLIANCE AND ENFORCEMENT PROGRAM

A. Core Program Activities

1. Producer Establishment Inspections (PEIs)

NYSDEC does not conduct PEIs, upon the advisement of USEPA Region II, that our State pesticide control specialists are not authorized to collect CBI under federal credentials. The ability to collect CBI is necessary to conduct PEIs.

The inspection and resource commitments under this work plan do not include PEIs. Any change in NYSDEC's ability to conduct PEIs will result in our reassessment of PYs apportioned under this work plan. Also, NYSDEC pesticide control specialists would need to be trained in conducting PEIs.

As stated in the State's January 2008 residue removal program adequacy documentation to USEPA, for the purposes of checking refiller compliance, NYSDEC will conduct inspections, which will be a combination of certain elements of pesticide establishment inspections (PEI) and market place inspections (MPI). The inspections for an adequate program will check refiller compliance with obtaining the residue removal procedure for refillable containers, keeping records of the procedure, and cleaning refillable containers before repackaging pesticides into them, if necessary. Given the narrow scope of residue removal requirements for which

NYSDEC FFY 2010 Work Plan, Pesticides Enforcement Cooperative Agreement

NYSDEC will inspect refillers, we do not anticipate the need to access CBI or utilize CBI-related components of a traditional PEI during those inspections.

2. Dealer/distributor/retailer Inspections

NYSDEC will conduct these inspections, addressing product compliance as well as compliance with bulk repackaging/custom blending policy and requirements for the sale of restricted use pesticides.

3. E-Commerce

Support under this Agreement is dedicated to other essential pesticides enforcement work loads, and, although there may be an oversight need in the e-commerce area, the essentials of the program take priority.

4. Misuse

NYSDEC will continue to address pesticide misuse at a level commensurate with this Agreement, as, per the guidance, it relates to WPS, food safety, structural pest control and drift. Any referrals from USEPA involving serious harm to humans or the environment would be tracked by NYSDEC as a §27 referral and, to that end, NYSDEC requests that USEPA Region II specifically identify any referral that requires tracking under FIFRA §27.

5. Pesticides Infrastructure

If USEPA makes additional funding available under this Cooperative Agreement or separately, NYSDEC pesticides program staff would participate in training such as Pesticide Inspector Residential Training (PIRT), Pesticide Regulatory Education Program (PREP), Case Development Training, and other training.

Regarding enhanced database development, which the Guidance calls upon USEPA Regions to strengthen, resource limitations do not allow NYSDEC to plan any major pesticide enforcement database enhancements for the near future.

6. Compliance Assistance

USEPA has not requested NYSDEC to work with them and the Agricultural Compliance Center, which is discussed in the Guidance. If USEPA were to request NYSDEC assistance, NYSDEC would need to reassess the work load under this Agreement/work plan, and make adjustments accordingly.

7. Cancellations, Suspensions, Other Major Regulatory Actions and National High Risk Initiatives

USEPA has not recently specifically requested NYSDEC to assist them with implementing cancellation/suspension orders, by conducting inspections and other compliance monitoring activities, to check compliance with major pesticide regulatory actions within time frames specified in the nationally-issued Compliance Monitoring Strategies, as discussed in the cooperative agreement guidance. If USEPA takes use actions such as these, NYSDEC would inform the registrants of the coming suspension/cancellation at the NYS level and suspend/cancel the product under NYS's Product Registration Program. We would notify our Regional pesticide control specialists of the action.

8. Import and Export Inspections

NYSDEC does not conduct import and export inspections, upon the advisement of USEPA Region II that our State pesticide control specialists are not authorized to collect CBI, which is necessary to conduct them. If USEPA confirms that NYSDEC pesticide control specialists are lawfully authorized to collect CBI and requests NYSDEC to conduct import and export inspections, the following would need to occur:

- NYSDEC would need to consider the feasibility of our involvement, reassess the work load under this Agreement/work plan and make adjustments accordingly.
- NYSDEC pesticide control specialists would have to be trained in conducting import and export inspections.
- Before it is possible for NYSDEC pesticides staff to conduct import or export inspections, internal Department authorization will need to be obtained to conduct them (potentially relating to NYSDEC's approach to national security concerns).
- Joint inspections would need to be conducted, with USEPA accompanying NYSDEC, until NYSDEC gains expertise in this area.

9. Section §18, §24(c), and Experimental Use Monitoring

The 2008-2010 Guidance calls for inclusion in this work plan of elements for each of the following: §18, §24(c), and Experimental Use. The elements include: a description of how the State plans to address monitoring and follow-up to ensure compliance, and that the number of inspections to be conducted be negotiated with the USEPA Region. The description of NYSDEC's approach and inspection projection for these elements is summarized in Table A of this work plan.

10. Antimicrobial Pesticides

The Guidance, calls upon the states, when requested by USEPA, to sample antimicrobials for testing and place a priority upon such work. During a prior work plan negotiation with USEPA

Region II, NYSDEC was advised that it is not expected to conduct any antimicrobial sampling and that it is conducted by the USEPA Region II.

The Guidance also calls upon states to "...consider inspections and education targeted to the proper use of antimicrobials used to protect human health." Antimicrobial use is very broad and the audience for education and inspections could be expansive. Unless additional federal resources are made available under this Agreement or unless other work loads under this Agreement are reduced, NYSDEC would not be able to conduct inspections or education efforts targeted to antimicrobials.

11. Endangered Species (ES)

NYSDEC considered the new ES elements of the Enforcement Guidance; we summarize them here and then provide our approach for this work plan:

- USEPA OPP will develop outreach, training, and other materials on its ES Protection Program (noticed in 70 FR 66,392).
- USEPA's Office of Compliance is committed to preparing ES inspection guidance to be incorporated into the FIFRA Inspection Manual.
- Enforceability will be directly dependent upon USEPA's FIFRA-enforceable ES Bulletins and amended labeling.
- ES inspections will involve the following categories: producer establishment, market place, and dealer.

The Guidance also says that the states:

- should work with their USEPA Region to assure necessary authority and procedures to inspect and enforce ES requirements are in place,
- are to plan to begin conducting inspections incorporating ES elements during the 2008-2010 grant cycle, once OPP publishes ES Protection Bulletins and pesticide products with ES labeling enter the market place, and
- "must" collect and report to USEPA the number of use and for cause inspections where:
1) it could be determined that the product was labeled requiring pesticide use limitations and any applicable ES Protection Bulletins, and 2) there was an alleged violation of ES labeling requirements including ES Protection Bulletins.

During prior work plan discussions with USEPA Region II involving the current Guidance as it relates to Endangered Species, the Region concurred with NYSDEC's general approach, described below.

NYSDEC recognizes the importance of ES in relation to pesticides. Routine inspections may include, if applicable, review in light of standard ES label statements. However, we do not plan to conduct inspections incorporating elements for new ES label statements/bulletins or provide related reporting during FFY 2010 due to the following considerations:

- USEPA has not developed ES bulletins applicable to NYS. The Guidance states that this is an element upon which enforcement is dependent.
- There are no additional funds provided under this Agreement to set up and carry out an ES inspection and reporting program. Although USEPA calls for ES reporting under the Enforcement Cooperative Agreement, the specifics for that reporting (formula, etc.) are provided under the Pesticide Program Cooperative Agreement. That Agreement provides \$1,180 for the ES program in NYS (federal funds and state match). With that level of support, it is not fiscally possible to carry out the inspection and reporting activities called for under the two Guidances.
- Per USEPA Region II, NYSDEC does not conduct PEIs, one of the ES inspections identified by USEPA. If PEIs need to be conducted for ES purposes, USEPA Region II would need to conduct them.

When USEPA issues ES statements on labels referencing Bulletins pertinent to, we will reassess our approach and resources available to monitor compliance with those statements in NY.

12. Containment Inspections

The Department anticipates conducting containment inspections, using USEPA credentials at facilities that are subject to the federal containment regulations. Prior to these inspections, as well as during and after them, the Department will continue to conduct outreach pertaining to these regulations. The numbers of containment inspections projected to be conducted by NYSDEC are reflected in the table at the end of this work plan

13. Optional Program Activities

In response to the Guidance encouraging states to participate in USEPA's new Residue Check Sample Pilot Program; the NYSDEC DSHM Laboratory participates fully in the AAPCO Formulation Check Sample Program, and the AAPCO Residue Check Sample program, and will continue to do so.

B. Inspection and Sample Collection Activities

NOTE: Inspections and sampling are important parts of the program and we will continue to address it in the work plan. However, this subject has not been addressed in USEPA's Guidance for over 12 years. Therefore, we have consolidated this section in this work plan.

1. Inspections, Sampling and Sample Analyses

Types and numbers of inspections projected to be conducted by NYSDEC are reflected in the table at the end of this work plan. Based on federal work load factors for inspections and sample collection and analyses, the numbers of inspections to be conducted, and samples to be collected and analyzed under this work plan are those projected to be carried out with funding under this Cooperative Agreement.

NYSDEC projects that, under this Agreement, the following will occur:

- 16 physical samples will be collected, and
- 26 sample analyses will be conducted.

2. *Documentation of Inspections and Inspection Reports*

Inspections, as included on the projection table at the end of the work plan, will be conducted in accordance with the procedures set forth in the USEPA, and NYSDEC Pesticides Inspector Manuals and other guidance such as the new WPS inspection criteria. Proper documentation of those inspections (affidavits, maps, photos, etc.) will be prepared, as appropriate. Narrative reports will be prepared on inspections conducted under this Agreement, where violations are found, as specified in the applicable compliance monitoring strategies.

Copies of all inspection reports for inspections conducted under this Agreement will be retained by the State for a period of at least six years, or until any associated enforcement cases are resolved and closed. These reports will be available for examination by USEPA.

C. **Quality Assurance Program**

1. *Analytical Methods*

Pesticide samples resulting from all categories of use surveillance will be analyzed by the NYSDEC Pesticide Laboratory or by the New York State Department of Health (NYSDOH) or by a laboratory under contract to the State of New York. Standard Association of Official Analytical Chemists (AOAC), USEPA's Manual of Chemical Methods for Pesticides and Devices (14th Ed.), the Collaborative International Pesticides Analytical Council (CIPAC) Limited Handbook, the FDA Pesticide Analytical Manual (PAM), or any other methods provided and accepted by USEPA and specified levels of quality control, as used by USEPA, must be adhered to in every sample analysis procedure.

All routinely used in-house methods will be validated and documented. All potentially violative samples will be verified by procedures spelled out in the applicable pesticide product procedures manuals or as otherwise specified in the Quality Assurance Program Plan. Pesticide residue samples in support of misuse investigations may also be analyzed by the applicant's designated laboratory, using available Food and Drug Administration (FDA), USEPA, United States Geological Survey (USGS) or other accepted methods available in the scientific literature or by the pesticide industry. All reported results will be accompanied by appropriate quality control parameters so as to allow evaluation of precision, accuracy, freedom from interferences and confirmation of pesticide (or metabolite) identity.

2. *Check Sample Program*

The NYSDEC DSHM Laboratory participates fully in the AAPCO Formulation Check Sample

Program, and the AAPCO Residue Check Sample program, and will continue to do so.

3. *Back-Up Analysis*

NYSDEC can request back-up analyses from approved laboratories, if necessary or as requested by USEPA Region II, if additional federal resources are provided. Examples where backup analysis could potentially be requested are:

- When NYSDEC believes it is necessary to have the results of an analysis verified, we will request an impartial or second analysis before initiating an enforcement action; or
- When NYSDEC requests that USEPA take the enforcement action and USEPA desires independent verification of our analysis; or
- A reference analysis is required due to conflicting results between the State and the regulated party.

4. *Submission/Retention of Reports*

Copies of all analytical reports, associated raw data and other necessary records for samples collected will be retained by NYSDEC and be available for examination by USEPA. The analytical reports must be retained by NYSDEC or the USEPA Regional Office until the associated enforcement cases are resolved and closed out.

5. *Cross Contamination Screening*

The NYSDEC pesticide Laboratory analyzes food samples for enforcement purposes only. The NYS Agriculture and Markets laboratory analyzes food samples for tolerance limits. The tolerance analyses are not reported under this Agreement.

6. *Training of Analytical Chemists and Inspectors*

USEPA personnel will train NYSDEC pesticide program staff as needed. Using cooperative agreement or other funds, NYSDEC will avail itself of USEPA workshops, seminars and meetings on proper sample analytical procedures, instrumentation, methodology, and quality assurance. Inspections, chemistry analyses, case preparation and prosecution will be performed in accordance with USEPA procedures designed to assure sample integrity, chain-of-custody, use of standard methods of analysis, sufficiency and adequacy of the evidence, and administrative due process. NYSDEC will avail itself of USEPA training related to these areas, if such training is offered and funded by USEPA.

7. *Provision of Enforcement Samples*

NYSDEC will make a split sample available to any person from whom a sample was collected, if requested.

D. Assignments From USEPA Region II and Referral and Inspection Procedures Under FIFRA Sections 26 and 27

NYSDEC will respond to routine federal assignments, which are minor in nature and for which USEPA Region II requests, in writing, NYSDEC cooperation. NYSDEC will review the content of these requests and time frames for their completion, to assess whether they are appropriate and practical, and will discuss any related questions or concerns with USEPA Region II. (NOTE: NYSDEC advises that USEPA needs to communicate all requests for assistance or information from NYSDEC, whether needed from the Central Office or any of the NYSDEC Regional Offices, through the Central Office Bureau of Pesticides Management.)

The official response times for initiating and completing such USEPA assignments are shown below. However, various factors influence the amount of time needed for response. NYSDEC will communicate with USEPA Region II regarding any need for changes to these time frames in order to conduct proper investigations.

- **Priority 1 Assignments:** The initiating inspection will be conducted as soon as possible, but no later than 20 work days after receipt of the assignment. The preliminary inspection report will be submitted to USEPA Region II no later than 30 work days after receipt of the assignment. The final report will be submitted within 20 work days following conclusion of the investigation or receipt of laboratory results.
- **Priority 2 Assignments:** The initiating inspection will be conducted within 45 work days after receipt of the assignment. The final report will be submitted within 45 work days after initiating the investigation.

Section 27(a) of FIFRA requires USEPA to refer to the states any information the Agency receives indicating a significant violation of pesticide use laws. In accordance with the Final Interpretive Rule governing FIFRA Sections 26 and 27 (40 CFR Part 173), USEPA in consultation with NYSDEC, will annually identify, in writing, priority areas for formal referral to the State. All pesticide use cases identified as significant will be referred to NYSDEC by USEPA Region II in writing as soon as possible, and will be formally tracked as set forth in the Final Interpretive Rule. The State will commence appropriate inspection and enforcement action within 30 work days after receipt of the referral. This period may be extended, after negotiation, if required by the procedural characteristics of the State regulatory structure or the complexity of the case. If NYSDEC has not reported on the investigative status within 30 days of the date of referral, USEPA will contact NYSDEC to learn the results of the investigation and NYSDEC's intended enforcement response to any violations detected.

If USEPA Region II determines that the NYSDEC's intended investigation and enforcement response to the violation is inappropriate, USEPA will first attempt to negotiate an appropriate NYSDEC response. If the NYSDEC is unwilling or unable to alter its original response, USEPA may bring its own enforcement action, after appropriate notice to NYSDEC. That written notice will summarize the facts relating to the NYSDEC response, discuss the reasons for USEPA's

determination that the action is inadequate, and state that the USEPA will initiate its own enforcement action. USEPA Region II will not initiate an enforcement action sooner than 30 days after NYSDEC was notified. The NYSDEC, in consultation with the USEPA, may return the referral to USEPA for further action.

III. ENFORCEMENT, CASE PREPARATION AND PROSECUTION

Enforcement actions reported will be those occurring in regard to the inspections conducted under this Agreement. A portion of inspector and NYSDEC attorney staff time spent on pesticides enforcement matters, as supported under this Agreement, will be reported (e.g., consent orders, case preparation and hearings).

NYSDEC will be responsible for the quality and sufficiency of evidence gathered for inspection, laboratory, and investigatory activities, which NYSDEC performs under this Agreement. If NYSDEC determines, in regard to evidence found in association with an investigation conducted under this Agreement, that USEPA needs to be a party to an enforcement action, NYSDEC will refer the matter to USEPA. In regard to such a referred case, if requested by USEPA, files pertinent to USEPA's case will be made available to the designated USEPA Region II Case Review Officer.

IV. REPORTING, ENFORCEMENT MEASURES, AND EVALUATIONS

A. Core Pesticide Enforcement Reporting and Evaluations

DUE DATES FOR REPORTING, PER USEPA GUIDANCE	
Performance Measures	USEPA Region Input into ACS by Oct 15 (approximate date – see item IV.D. for additional details)
EOY Report	States submit within 90 days of end of grant year (USEPA Regions submit to OECA by February 28)
5700-33H	USEPA Regions enter data by October 30
WPS 5700-33H	USEPA Regions submit data by December 31
ES Inspection Report Form	USEPA Regions submit data by December 31

NYSDEC has reflected the above USEPA due dates in the text of this section of our work plan.

- Performance of activities by the NYSDEC Bureau of Pesticides Management under the Agreement will be monitored by the project officer in USEPA Region II and by the NYSDEC.

- NYSDEC will prepare and submit to USEPA Region II, within 30 work days following the end of the second quarter, a written mid-year report of activities conducted under this Agreement. Per the guidance, USEPA Region II will prepare and submit to NYSDEC a written mid-year evaluation of the performance of NYSDEC under the program. USEPA will conduct a mid-year evaluation meeting on-site at NYSDEC, if possible, or, at a minimum, through a conference call with NYSDEC. This meeting should be held within 30 days of NYSDEC's submittal of the mid-year report to USEPA Region II.
- NYSDEC will prepare and submit to USEPA Region II, within 90 work days following the end of the fourth quarter, an end-of-year report of activities performed under this Agreement. USEPA Region II will prepare and submit to NYSDEC an end-of-year evaluation reviewing the accomplishments of the program year. USEPA Region II will conduct an end-of-year evaluation meeting on-site at NYSDEC, within 30 days of NYSDEC's submittal of the end-of-year report to USEPA Region II.
- Per agreement with USEPA Region II, NYSDEC will report, on USEPA forms 5700-33H and WPS5700-33H, total program accomplishments, not just the data on enforcement conducted by the staff supported under this Agreement, as in previous years. The 5700-33H will be provided to USEPA Region II prior to the end of October 2010, since USEPA's due date for their regional offices to submit the 5700 data is by October 30. The WPS5700-33H will be submitted to USEPA Region II prior to December 31, 2010, since the USEPA due date for regional submission is December 31.
- Per our agreement with USEPA Region II regarding USEPA Pesticide Enforcement Grant Outcome Measures: NYSDEC will report total program accomplishments for the measures: Repeat Violator, Complying Action, and Efficiency. NYSDEC will report these measures, on USEPA's forms for such, at the end-of-year point. See item IV.D.
- NYSDEC will submit, as part of the end-of-year report, a C&T report, as required by 40 CFR 171.7(1). Per the federal guidance, certification and training (C&T) accomplishments data will be reported at the end-of-year only in electronic format.

B. Endangered Species (ES) Reporting

The Guidance calls for states to summarize in the end-of-year report (on USEPA's ES Inspection Report Form), "...compliance and noncompliance areas for all inspections where ES Bulletins are applicable...." This work element is also addressed in the Pesticides Program Cooperative Agreement. Please see item II.A.11., regarding that NYSDEC will not be reporting ES Bulletin label inspections during FFY 2010.

C. PART and Performance Measure Template Reporting

Included in the Guidance is a requirement for reporting on the three enforcement measures (repeat violator, complying action, and efficiency), as part of the State Grant Performance

Measure Template and entered by USEPA Regions into the Annual Commitment System. As per our agreement with USEPA Region II described above for the Grant Outcome Measures, NYSDEC will submit data at the end of the year for all three of the measures. **NOTE:** The table of due dates in the Guidance, which states that, the date of October 15 by which USEPA Regions must enter their PART measures information is an approximate date and that USEPA Headquarters will provide the Regions with a specific date. Unless USEPA Region II advises, sufficiently in advance, of a different due date, NYSDEC will provide measures information by October 30, since the 15th is approximate. Since the year ends September 30, NYSDEC gathers data and calculates the measures during the first half of October. It would not be practical to submit the information to USEPA before mid-October.

D. Significant Incident Reporting

States are encouraged to report serious incidents involving workers, handlers, the public, and nontarget species, based on criteria for severity supplied by USEPA. After USEPA supplies such criteria, NYSDEC will assess whether there are resources available and need for such reporting (i.e., if there are any such incidents in NYS during FFY 2010).

V. QUALITY MANAGEMENT PLANS (QMPs) AND QUALITY ASSURANCE PROJECT PLANS (QAPPs)

The Guidance calls for all applicants to submit a QMP, per USEPA requirements. NYSDEC submitted its QMP in 2001. An update of the QMP is in process during this FFY, so that it conforms to USEPA requirements for QMPs (EPA QA/R-2). The revision will be submitted for USEPA review when complete. QAPPs will be provided, as called for under our QMP and general USEPA standards.

**TABLE A
NYSDEC APPROACH AND INSPECTION PROJECTION
FOR SECTION (§)18, §24(c), AND EXPERIMENTAL USE PERMIT (EUP) MONITORING**

USEPA GUIDANCE ELEMENT	NYSDEC INSPECTION PROJECTION	NYSDEC GENERAL APPROACH FOR MONITORING
§18s exemptions: ensure compliance with terms and conditions of §18s within NYS, including misuse violations. §18 exemptions will be monitored through field inspections.	No projected number of inspections: The location of the use of pesticides under §18s is unknown. Without that information, it would only be by chance that an inspection would be conducted involving a §18. NYSDEC inspectors will be advised of §18s. If they inspect the specific crop (specific pest) on which the pesticide is to be used under the §18, they would check if the pesticide is in use; however, it would only be by chance that these factors would coincide.	During discussions involving the current guidance and work plans, USEPA Region II concurred with the approach described on this Table. NYSDEC recognizes the benefits of monitoring §18s and §24(c)s, and EUPs, all of which center on special uses or conditions for pesticide use. However, for practical purposes, these inspections cannot be a focus of this work plan. Lack of certain information makes it difficult to conduct inspections addressing some of these factors. (See "Inspection Projection" column). In addition, there are no additional funds provided for the conduct and reporting of such inspections.
§24(c): That FIFRA section permits states to provide registration for additional uses of currently registered pesticides in their state.	It is not possible to plan inspections for §24(c)s, because the location of use and user are unknown--if §24(c)s are encountered, however, we may conduct inspections.	
EUPs: The Guidance calls for state monitoring to ensure compliance with EUP terms and conditions, through inspections and oversight of the EUP for use/misuse of the involved pesticide.	Typically 1 - 2 inspections: Will depend on: the number of applications received and completed, cooperators being known for final EUPs, and if other factors line up, such as season and use plans.	NYSDEC will provide notification of FIFRA §18 exemptions, §24(c)s, and federal EUPs to our field staff. As feasible and appropriate, inspections would include a check for product use within the terms of the exemption or permit. NYSDEC will consider the feasibility of two steps regarding distribution and sale information: potentially requesting such information from the registrant for new §24(c)s, and whether any data could be mined from existing State use reporting data base (no use reporting by growers and sales reporting only for restricted use products).

TABLE B FFY 2010 PROJECTIONS FOR INSPECTIONS TO BE CONDUCTED AND SAMPLES TO BE TAKEN AND ANALYZED ¹	
INSPECTION TYPE/ SAMPLE COLLECTION/ SAMPLE ANALYSIS	PROJECTED NUMBER OF INSPECTIONS OR SAMPLES TO BE CONDUCTED
<i>Inspections</i>	
Agricultural Use for Cause ²	10
Agricultural Use ²	40
WPS	33
Nonagricultural Use for Cause ²	40
Nonagricultural Use ²	54
Dealer Records	9
Certified Applicator Records	70
Experimental Use ²	2
Market Place	45
Containment	2
<i>Inspection Subtotal</i>	305
<i>Physical Samples to be Collected</i>	16
<i>Sample Analyses to be Conducted</i>	
Residue Sample Analyses	25
Formulation Sample Analysis	1
<i>Sample Analyses Total</i>	26

¹This table reflects information for inspection and sampling supported under the FFY 2010 Pesticides Enforcement Cooperative Agreement. Federal work load factors, provided by USEPA Region II, for each inspection type, sample collection and analyses, were used in the calculation of the projected number of inspections, sample collections and sample analyses to be conducted. Also, the numbers of inspections to be conducted, by inspection type, are a best estimate. The number of inspections conducted in each category may be more or less than the number estimated on this table, based on program priorities and needs.

²Inspections with FIFRA §18 or §24, or EUP elements would be included primarily under these types of inspections, but could also be included under other inspection types.